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House Democrats Eye Water Subsidies But GOP Fears EPA Rate-Setting Role

March 08, 2019

Key House Democrats are exploring the possibility of creating an EPA program for low-income households to help them pay for water and sewer services, a plan that previously has won bipartisan support in the Senate though House Republicans are questioning whether the plan would give the agency a role in setting local rates.

"We . . . need to explore whether the federal government can play a role in helping subsidize the cost of clean water at a household level, as we do today for household heating and cooling costs through the Low-Income Home Energy Assistance Program (LIHEAP)," Rep. Grace Napolitano (D-CA), chair of the Transportation and Infrastructure Committee's water resources and environment subcommittee, said at a March 7 hearing on [legislation](#) to reauthorize the clean water state revolving fund (SRF).

She noted that many states and communities run rate assistance programs, "but I believe the federal government can take a greater role to reduce the cost of water to our American families."

Committee Chairman Peter DeFazio (D-OR) also endorsed the idea, saying, "I feel strongly about a federal role." He added that "hopefully" the committee will be able to advance legislation to "not only reauthorize the SRF but help low-income communities."

But Republicans on the panel seemed less interested in the idea, with Rep. Bruce Westerman (R-AR), the subcommittee's ranking member, saying there needs to be greater regulatory flexibility to reduce the costs to utilities and Rep. Daniel Webster (R-FL) questioning whether the federal government should be involved in setting water rates.

Wastewater utilities have [long pushed](#) for a LIHEAP-type program for the water sector, and EPA wastewater chief Andrew Sawyers [said in 2017](#) the agency was exploring rate assistance programs. He said he thought some iteration of the LIHEAP approach would work although it may not be exactly as the National Association of Clean Water Agencies proposes.

Rep. Marcia Fudge (D-OH) has introduced [legislation](#) in previous congressional sessions to create a grant program to assist low-income homes with water and sewer bills, a measure that in 2018 won support from nearly two dozen Democrats in the House.

A companion bill in the Senate was sponsored by Sen. Ben Cardin (D-MD), with support from Sens. Roger Wicker (R-MS) and Debbie Stabenow (D-MI).

While some states and localities have created household affordability programs, other states have opposed such measures, water industry sources have said. *When state legislatures* “start looking at treating low-income populations differently than other ratepayers, there’s an equity concern and some states and state constitutions have prohibitions against charging differing and variable rates,” one source said.

Greater Flexibility

In their comments, Republicans stressed the need for greater flexibility and raised concerns that the legislative plans could give EPA a role in setting local water rates.

Westerman, in his opening statement at the hearing, said, “[C]ommunities -- particularly those that are struggling to address their needs and reduce the financial burdens on households -- need to be given greater flexibility, including through the implementation of a vibrant integrated planning and permitting approach, in addressing the compliance mandates that have been imposed on them.”

And later during the hearing, he said there are “always two sides of the coin to affordability” and “regulations falsely drive up costs.”

Webster also seemed to doubt the need for a federal rate assistance program, asking Jill Heaps, assistant professor of law at Vermont Law School, whether water and wastewater rates are “way low, medium or too high.”

“It depends on where you are and who you ask,” Heaps replied.

Webster then asked, “Should the federal government set rates?”

Heaps said rates have traditionally been set locally but the federal government can provide financial or other incentives for local utilities to develop good policies to assist low-income households.

Westerman also echoed recent concerns raised by the U.S. Conference of Mayors (USCM) that its members need to be vigilant in ensuring EPA and states implement legislation Congress approved last year -- which President Trump enacted in January -- codifying EPA's integrated planning policy that allows local authorities to address their Clean Water Act wastewater and stormwater requirements on a pollution priority basis -- rather than all at once.

“EPA now needs to effectively implement the [Integrated Planning] Initiative to help communities meet their needs in a more cost-effective manner,” Westerman said.

And Rep. Garret Graves (R-LA) asked witnesses at the hearing what Congress got right in the law and what might need to be tweaked, pledging “thorough oversight” of the issue and saying there may “possibly be a second-generation bill.”

Mayor David A. Condon of Spokane, WA, who was representing USCM, said the law allows EPA and states to provide flexibility to utilities in meeting water quality standards, including through the use of variances, which temporarily modify the standards when dischargers cannot meet their current permit limit immediately but are also uncertain whether they can ultimately meet it. However, Washington state has never done a variance, Condon said.

Spokane developed an integrated plan with EPA prior to the law's passage, but the state has since tightened its water quality standard for polychlorinated biphenyls to 7 parts per quadrillion -- level for which no accurate test exists and for which there is no known technology to reliably achieve the standard, he said.

Condon also urged the lawmakers to establish defined funding for integrated planning projects rather than requiring municipalities to piecemeal together funding from various sources. -- *Lara Beaven* (lbeaven@iwpnews.com)

Bloomberg Environment

Drinking Water Limits for Fluorochemicals Years Away: EPA

<https://news.bloombergenvironment.com/environment-and-energy/drinking-water-limits-for-fluorochemicals-years-away-epa>

Sylvia Carignan

March 8, 2019

- Process for new PFOA, PFOS limits to take years—if EPA chooses to act
- EPA addressing public interest in fluorinated chemicals

Federally enforceable drinking water standards for two ubiquitous chemicals are likely about four years away—even if the EPA decides to act—the agency said March 8.

Limits for per- and polyfluoroalkyl substances would take at least 3 1/2 years to finalize, if the Environmental Protection Agency takes the amount of time it's statutorily allocated to create drinking water standards, Eric Burneson, a director in the EPA's groundwater and drinking water office, said at the Global Chemical Regulations Conference in Washington.

The substances have been detected in a growing number of public water supplies around the country. EPA Administrator Andrew Wheeler wants the agency to determine by the end of 2019 whether two specific members of the per- and polyfluoroalkyl substance family, known as PFOA and PFOS, should be regulated in drinking water.

Within two years of making that determination, the agency also must propose an enforceable level and ask the public to comment. Once public comments are received, the EPA has 18 months to revise its proposal and publish a final version.

Steve Via, director of federal relations for the American Water Works Association, said at the conference that such regulations might take longer.

"If we move forward on a normal pace, we'll see a [maximum contaminant level] in 2027," he said.

"The EPA could always move faster," Burneson said.

The chemical compounds, also known as PFAS, have been used to manufacture nonstick and stain-resistant coatings in clothing, fast-food wrappers, carpets, and other consumer and industrial products.

PFAS compounds may cause adverse health effects, including developmental harm to fetuses, testicular and kidney cancer, liver tissue damage, immune system or thyroid effects, and changes in cholesterol, according to the EPA.

EPA Region 9 appears to drop objections to Arizona mine

March 07, 2019

EPA Region 9 appears to be dropping its long-running objections to a planned Arizona copper mine by saying it will not raise the issue from the region to agency headquarters, and will instead allow the Army Corps of Engineers to issue a Clean Water Act (CWA) dredge-and-fill permit for the project.

The Corps confirmed to the *Arizona DailyStar* March 4 that it intends to issue the CWA section 404 permit for the Rosemont Copper Mine, and EPA told the paper it will not ask for additional review of the permit.

EPA Region 9, which includes Arizona and other Western states, has repeatedly criticized the project in the past, most recently in November 2017 comments to the Corps. At the time, the region said, "As with prior EPA reviews, we continue to find the permitted activities of the proposed mine will significantly degrade Cienega Creek, Davidson Canyon, and their tributaries despite the actions proposed in the" habitat mitigation and monitoring plan.

But Region 9 Administrator Michael Stoker told Stu Gillespie of the Earthjustice, who represents the Tohono O'odham Nation and two other Arizona tribes, in a Feb. 28 email that the regional office was not objecting to the Corps' plan to soon issue the permit -- the last permit needed for the copper mining project to start -- the Arizona paper reports. The regional office also told the paper it was not elevating the issue to headquarters.

Arizona Reps. Raúl M. Grijalva (D), chair of the Natural Resources Committee, and Ann Kirkpatrick (D) said in a Feb. 28 statement after meeting with Corps officials that they "both believe critical questions remain unanswered, including whether there has been adequate review under the National Environmental Policy Act."

The lawmakers said they "are concerned that this permit could be issued imminently without full consideration of the facts. We're going to pursue every avenue to ensure Rosemont is handled transparently, and we will be conducting additional oversight of this project."

The agency's reversal eliminates the possibility that it will veto the Corps' permit, given the Trump administration's objection to vetoing already issued permits.

EPA can use its statutory authority to limit disposal sites that would otherwise be allowed in a dredge-and-fill permit if it finds that there would be "unacceptable adverse effects" to the environment.

While section 404(c) does not allow EPA to completely vacate a permit, a broad enough bar on disposal is seen as a veto for all practical purposes because it effectively blocks the "fill" part of the dredge-and-fill permit.

Federal courts have ruled EPA can use its "veto" authority at any time in the permitting process, including before a permit application is made or retroactively.

But last year then EPA Administrator Scott Pruitt directed the Office of Water to develop a rule restricting when the agency can use its veto authority, specifically eliminating preemptive and retroactive vetoes.

Environmentalists have urged the current administrator, Andrew Wheeler, to forgo the rulemaking.

Drinking Water Limits for Fluorochemicals

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EPA Drops Bid to Revive CWA Rule Delay, Cementing National 'Patchwork'

EPA has voluntarily withdrawn its appeals of federal district court rulings striking down its delay of the Obama-era Clean Water Act (CWA) jurisdiction rule, cementing for now a nationwide "patchwork" of regulations on the law's scope that will persist until the White House finalizes a policy to repeal or replace the 2015 jurisdiction rule.

EPA and the Army Corps of Engineers filed motions on March 8 to voluntarily dismiss their two pending appeals of cases where district judges struck down on procedural grounds the agencies' joint rulemaking that would have delayed any implementation of the 2015 CWA jurisdiction standard until 2020.

Those decisions mean the Obama-era rule applies in 22 states, while the remaining 28 are subject to the combination of 1980s regulations and later guidance that the newer standard was meant to replace.

Neither motion provides an explanation for the Trump administration's latest move, since federal courts do not require a party to set out its reasons for dropping a case. But it ensures lingering uncertainty for a CWA standard, despite the agencies' claims that their efforts to repeal the 2015 rule and replace it with a narrower standard would provide regulatory certainty on the scope of the water law.

The agencies along with GOP-led states and their industry allies previously argued that courts should move quickly to end that patchwork of CWA policies, contending that it undermines the purpose of the law and creates unnecessary difficulties for regulators and regulated entities alike.

Despite those claims there appeared to be little chance of either court hearing the cases -- the U.S. Court of Appeals for the 4th Circuit in *South Carolina Coastal Conservation League (SCCCL), et al., v. Wheeler, et al.*, and the 9th Circuit in *Puget Soundkeeper Alliance and Sierra Club v. Wheeler, et al.* -- without a protracted litigation process that might not lead to a decision until close to the scheduled end of the delay in 2020.

Previously, an industry coalition that intervened in defense of the delay in the 4th Circuit case withdrew from that appeal, with an attorney for the coalition noting to *Inside EPA* that the sheer number of suits over CWA jurisdiction, including a wide array of challenges to the 2015 standard itself, made dropping the case “just a matter of choosing our battles.”

But dropping the appeals could be a sign that EPA and the Corps are preparing to finalize their long-pending formal repeal of the 2015 rule, since taking the Obama-era standard off the books would moot all litigation over whether to enforce it -- though the repeal itself would face court challenges.

The agencies first proposed to scrap the jurisdiction rule in 2017, following an executive order from President Donald Trump commanding them to reconsider the standard that Republicans and industry insist goes far beyond Congress’ intent in crafting the CWA.

They followed that proposal with a “supplemental” update with greatly expanded justifications for a repeal that was released in June 2018, including a new public comment period where environmentalists, Democratic-led states and other defenders of the 2015 rule said the administration still lacks a defensible legal or scientific basis for withdrawing the rule.

But there has been no further movement on the repeal in the months since; as of press time, the White House Office of Management & Budget does not list it as one of the agency actions under pre-release review, or as having cleared review in the last 30 days.

Meanwhile, the agencies have separately proposed a replacement for the 2015 rule that would greatly narrow the number of waterbodies subject to CWA protections, but that standard is still in the midst of a 30-day comment period that closes April 15, and is unlikely to be finalized before the end of the year.

The Telegraph PFAS Action Act introduced to N.H. legislators

Legislation in the House and Senate that will require the EPA to designate PFAS hazardous substances has been proposed with support from New Hampshire legislators.

HR535, the PFAS Action Act of 2019, introduced on Jan. 14, was co-sponsored by Chris Pappas, who represents New Hampshire’s 1st Congressional District. Sens. Jeanne Shaheen and Maggie Hassan co-sponsored the Senate version of the bill on March 1.

Both bills require the EPA to designate PFAS hazardous substances within one year of enactment and make contaminated sites eligible for cleanup funds under the EPA Superfund law. The PFAS Action Act also would require responsible parties to report the excess release of PFAS materials to state and local emergency response officials and be liable for the cost of response actions.

The bill also authorizes federal actions to respond to releases of all PFAS chemicals, not just PFOA, if the release would present a substantial danger to the environment or public health.

PFAS chemicals, which are used for consumer products and firefighting foam and present significant health hazards, including cancer, contaminate groundwater and were found at the Pease Air Force base in Portsmouth and the Saint-Gobain plant in Merrimack.

Saint-Gobain paid to connect more than 750 homes to public water after their private wells were found to be contaminated with PFAS.

The Department of Environmental Services has proposed Maximum Contaminant Levels for four PFAS. Plans to establish national MCLs by the EPA are proceeding in accordance with the PFAS Action Plan that was announced Feb. 14.

"As a member of the PFAS Task Force, I am proud to co-sponsor bipartisan legislation that will classify PFAS as a hazardous compound and direct the EPA to clean up contaminated sites," Pappas said. "This legislation is an important step in addressing the serious public health threat that directly impacts so many New Hampshire communities."

"This bipartisan, common-sense legislation will provide Granite State families and millions more across the nation, with the peace of mind they deserve," Shaheen said. "Families shouldn't have to worry about the safety of their drinking water every time they turn on the tap."

"Requiring that the EPA designates all PFAS chemicals as hazardous substances is an important step to help ensure the safety of drinking water in New Hampshire and across the country," Hassan said. "The EPA has dragged its feet for far too long when it comes to this issue,

According to Congressional records, the PFAS Action Act was introduced in the House on Jan. 14 and was referred to the Committee on Energy and Commerce and the Committee on Transportation. On Feb. 7, it was referred to the Subcommittee on Railroads, Pipelines and Hazardous Materials.

Shaheen introduced the Safe Drinking Water Assistance Act in 2017 that would improve federal efforts to address the public health effects of contaminants, including PFAS. Both senators have been involved in multiple legislative efforts to address PFAS contamination.

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